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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 49

THE UNITED STATES OF AMERICA, PETITIONER

vs.

EDWARD RYAN, CLAIMANT OF ONE BRUNSWICK BAR, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 17, 1931
CERTIORARI GRANTED MAY 25, 1931

(35811)

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In the District Court of the United States, District of Montana, Butte Division.

No. 545.

UNITED STATES OF AMERICA,

Libelant,

vs.

GEORGE LEWIS (*alias* ED. DAVIS), and 1 Brunswick Balke Bar and Back Bar, etc.,

Libelees.

LIBEL OF INFORMATION.

The United States of America, by Arthur P. Acher, Assistant United States Attorney for the District of Montana, brings this libel of information against the libelees above named, and alleges:

1. That on or about the 24th day of February, 1930, at and within that certain soft drink parlor operated by the defendant and located at No. 7 West Galena Street, in the city of Butte, county of Silver Bow, State and District of Montana, within the Internal Revenue Collection District of Montana and the 19th Prohibition District and within the jurisdiction of this court, Ben Holter, Carroll A. Olson and George W. Doyle, Federal Prohibition Agents, seized on land, the following described goods, merchandise, articles, objects and personal property, to wit: 1 Brunswick Balke bar and back bar, complete with mirrors, 1 Pick & Co. electric water heater, 1 Hamilton Beach electric mixer, #10M602419A, 1 National Cash Register, size 1006,

#S297932 D. D., 1 Regulator wall clock, 1 settee, 1 card table, 1 4-ft. show-case, 3 wire back chairs, 4 cuspidors, 1 14-ft. iron floor mat, 1 cigar case—top and 3 sides broken, 2 davenport ends, 1 davenport base—2 pieces, 1 davenport back, 1 floor mat, 1 back bar in 3 sections, 1 mirror frame, 2 mirrors, 11 pieces marble, 2 pieces back bar top, 2 end posts, 1 wash rack—3 sections, 2 [1*] pieces molding, 1 card table, 1 clock, 2 sm. posts, 3 iron chairs, 1 bar front and ends—3 pieces, 1 large picture, 1 bar top and 4 cuspidors.

2. That on said date the defendant George Lewis, *alias* Ed. Davis, at and within the premises hereinbefore described, did then and there wilfully, wrongfully unlawfully and feloniously have in his possession and custody and within his control certain goods, wares and merchandise, to wit, whiskey, beer and gin, a more particular description of which is to your informant unknown, intoxicating in character and fit for use and intended for sale for beverage purposes, which said intoxicating liquors were goods and commodities for and in respect whereof a tax was then and there due and unpaid, which said intoxicating liquors were then and there in the possession, custody and control of said defendant for the purpose of being sold or removed by him in fraud of the internal revenue laws of the United States of America and with the design to avoid the payment of said taxes, then and there due and unpaid; contrary to the form of the statute in such

*Page-number appearing at the foot of page of original certified Transcript of Record.

case made and provided, and against the peace and dignity of the United States of America; that said property described in paragraph 1 hereof, at the time of and prior to said seizure, was in the place and building where said intoxicating liquors were found and in the possession of and under the custody and control of said defendant.

3. That by reason of the premises the said goods, merchandise, articles, objects and personal property has become and is subject to forfeiture and condemnation; and that before the commencement hereof the seizure above mentioned was adopted by the Federal Prohibition Administrator for said district, and said property is now in his possession in storage at the Jones Storage and Transfer Company, at Butte, Montana.

WHEREFORE, libelant prays that due process issue hereon; that a time and place be fixed for the trial and hearing of this libel upon due notice to all persons concerned; and that upon said hearing said property be condemned and forfeited to the United States, and that the same may be sold or otherwise disposed of [2] as provided by law.

ARTHUR P. ACHER,

Assistant United States Attorney for the District of Montana.

Duly verified by Arthur P. Acher.

Filed March 21st, 1930. [3]

NOTICE OF SEIZURE.

In the District Court of the United States, District of Montana, Butte Division.

UNITED STATES OF AMERICA,

Libelant,

vs.

GEORGE LEWIS (*alias* ED DAVIS), One Brunswick Bar and Back Bar, Complete With Mirrors, etc.,

Libelees.

NOTICE IS HEREBY GIVEN that a libel of information has been filed by libelant in the above-entitled court and cause;

That by order of court there has been seized at Butte, within the state and District of Montana, 1 Brunswick Balke bar and back bar, complete with mirrors, 1 Pick & Co. electric water heater, 1 Hamilton Beach electric mixer, No. 10M602419A, 1 National cash register, size 1086, No. S297932 D. D., 1 Regulator wall clock, 1 settee, 1 card table, 1 4-ft. show-case, 3 wire back chairs, 4 cuspidors, 1 14-foot iron floor mat, 1 cigar case, top and 3 sides broken; 2 davenport ends and 1 davenport base, 2 pieces; 1 davenport back, 1 floor mat, 1 back bar in 3 sections, 1 mirror frame, 2 mirrors, 11 pieces marble, 2 pieces back bar top, 2 end posts, 1 wash rack, 3 sections; 2 pieces molding, 1 card table, 1 clock, 2 sm. posts, 3 iron chairs, 1 bar front and ends, 3 pieces, 1 large picture, 1 bar top and 4 cuspidors, which said prop-

erty is held by the United States Marshal for Montana.

It is prayed in said libel of information that said property be condemned and forfeited to the United States upon the following ground:

That on or about the 24th day of February, 1930, one George Lewis, *alias* Ed Davis, whose true name is to the information unknown, at and within that certain soft drink parlor operated by the defendant and located at No. 7 West Galena street, in the city of Butte, county of Silver Bow, state and district of Montana, did, then and there, wilfully, wrongfully and feloniously have in his possession and custody and within his control certain goods, wares and merchandise, to-wit: whiskey, beer and gin, a more particular description of which is to your informant unknown, intoxicating in character and fit for use and intended for sale for beverage purposes, which said intoxicating liquors were goods and commodities for and in respect whereof a tax was then and there due and unpaid, which said intoxicating liquors were then and there in the possession, custody and control of said defendant for the purpose of being sold or removed by them in fraud of the internal revenue laws of the United States of America and with the design to avoid the payment of said taxes then and there due thereon and unpaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America; and that said goods, merchandise, articles, objects and personal property hereinbefore described at the time

of and prior to the seizure hereof, were in the place and building where said intoxicating liquors were found and in the possession of and under the custody and control of said defendant.

Notice is further given that by order of court all persons having or claiming any interest in said articles seized or having anything to say why the *said should* not be condemned and forfeited, appear and file their respective answers and defenses to such information setting forth their interests in or claim to said property libeled, with the clerk of the above-named court at Butte, Montana, on or before the 21st day of April, 1930, the same being the time and place hereby fixed for the return date hereon.

Dated March 21, 1930.

TOM BOLTON,
United States Marshal for the District of Montana.
By J. L. Callahan,
Deputy. [4]

PUBLISHER'S AFFIDAVIT.

State of Montana,
County of Silver Bow,—ss.

Before me, the undersigned, notary public, this day personally came C. L. Peterson, who, being first duly sworn, according to law, says that he is the principal clerk of "Butte Daily Post," a daily newspaper published at Butte, in said county and State, and that the publication, of which the annexed is a true copy, was published in said paper on the 25th day of March, 1930, and once each week there-

after for one consecutive week and that the rate charged therefor is not in excess of the commercial rates charged private individuals, with the usual discounts.

C. L. PETERSON.

Subscribed and sworn to before me this 2d day of April, 1930.

[Notarial Seal] HELEN BRENNAN,
Notary Public for the State of Montana, Residing at Butte, Montana.

My commission expires February 18, 1931. [5]

[Title of Court and Cause.]

MARSHAL'S RETURN.

United States of America,
District of Montana,—ss.

I hereby certify and return that I received the within warrant of arrest and monition on the 21 day of March, 1930; that I executed the same on the 24 day of March, 1930, by attaching the following articles stored with the Jones Storage and Transfer Co., at Wyoming and Iron Streets, Butte, Montana, to wit:

1 Cigar Case—Top Glass and 3 Sides Broken.
2 Davenport Ends.
1 Davenport Base in 2 Pieces.
1 Davenport Back.
1 Floor Mat.
1 Back Bar—3 Sections.

1 Mirror Frame.
2 Mirrors.
11 Pcs. Marble.
2 Pcs. Back Bar Tops.
2 End Posts.
1 Wash Rack—3 Sections.
2 Pcs. Molding.
1 Card Table.
1 Mixing Machine—Electric.
1 Cash Register.
1 Water Heater—Electric.
2 Small Posts.
3 Iron Chairs.
1 Bar Front & Ends—3 Pcs.
1 Clock.
1 Large Picture.
1 Bar Top.
4 Cuspidors.

That I then and there appointed R. T. McCulloh, President of the Jones Transfer Co., as custodian and served him with copies of Warrant of Arrest and Monition and Notice of Seizure; that I caused to be published in the "Butte Daily Post," a newspaper [6] of general circulation published at Butte, Montana, Notice of Seizure, publisher's affidavit being hereto attached and made a part of this return; that I also posted copy of said notice at the County Courthouse at Butte, Montana, on the 24 day of March, 1930; that there is hereto attached and made a part of this return receipt for the property attached, signed by R. T. McCulloh, Custodian;

that I also served copy of warrant on Geo. Lewis on March 21, 1930, at Butte, Montana.

Butte, Montana, April 11, 1930.

TOM BOLTON,
U. S. Marshal.
By James J. Maloney,
Deputy. [7]

[Title of Court and Cause.]

ANSWER AND DEFENSE OF EDWARD RYAN.

Comes now Edward Ryan and makes answer and defense to the libel and information on file herein, and admits, denies and alleges:

I.

Specifically denies that by an order of court there has been seized at Butte, within the State and District of Montana, 1 Brunswick Balke bar and back bar, complete with mirrors; 1 Pick & Co. electric water heater; 1 Hamilton Beach electric mixer, No. 10M602419A; 1 National cash register, size 1086, No. S297932 D. D.; 1 Regulator wall clock; 1 settee; 1 card table; 1 four-foot show-case; 3 wire back chairs; 4 cuspidors; 1 14-foot iron floor mat; 1 cigar case, top and 3 sides broken; 2 davenport ends and 1 davenport base, 2 pieces; 1 davenport back; 1 floor mat; 1 back bar in 3 sections; 1 mirror frame; 2 mirrors; 11 pieces marble; 2 pieces back bar top; 2 end posts; 1 wash rack, 3 sections; 2

pieces molding; 1 card table; 1 clock; 2 small posts; 3 iron chairs; 1 bar front and ends, 3 pieces; 1 large picture; 1 bar top; and four cuspidors, but admits said property is held by the United States Marshal for Montana.

II.

Admits it is prayed in said libel of information that said property be condemned and forfeited to the United States upon the grounds therein specified, and admits that the property above described was at the time of its seizure in the place or building known and designated and [8] located at No. 7 West Galena Street, in the city of Butte, county of Silver Bow, State and District of Montana.

III.

Alleges the fact to be that the seizure of said property was made under and by virtue of a search-warrant on the 24th day of February, 1930, on which said day one Ben Holter, a National Prohibition Enforcement Officer, operating within the jurisdiction of this court, did apply to L. M. Van Etten, a United States Commissioner for the District of Montana, residing at Butte, Montana, for a search-warrant, basing his right thereto upon the affidavit of one Carroll A. Olson, theretofore filed with said Commissioner, wherein he averred that on the 3d day of February, 1930, one John Doe Eddy sold to him moonshine whiskey on the ground floor of the brick building located at 7 West Galena Street, Butte, Montana, which said application was granted, and a search-warrant issued pursuant thereto

under the hand and seal of the office of said Commissioner, directing and commanding the said Ben Holter to make execution thereof in that certain place, room or building more particularly described as a saloon on the ground floor of a certain three-story brick building at 7 West Galena Street, in the City of Butte, State of Montana, and did command the said Ben Holter, in the name of the President of the United States, to enter said premises in the daytime with necessary and proper assistance, and: "There diligently search for said intoxicating liquors, vessels, bottles and containers of said liquors, whether in the said premises or on the person of the said keeper or other persons present and all utensils, apparatus and materials for the manufacturing of intoxicating liquors, or for the storing and possessing of the same, and all evidence of crime, of manufacturing, purchasing, possessing, selling or disposing of intoxicating liquors, as may be therein found in the form of books, receipts, recipes for manufacturing or compounding intoxicating liquors, receipts, bills of lading, notes, checks, liquor labels, letters and other such evidences, whether found in the premises or on said persons, and to report and act concerning same, as required by law, and to seize, secure and bring said property with a return of your action thereunder to the undersigned. [9]

IV.

That, armed with the said search-warrant, the said Ben Holter, National Prohibition Enforcement

Officer aforesaid, with necessary and proper assistance, did enter into and upon said premises, and did find therein and in charge thereof one George Lewis, the libelee above named, and did discover therein, as disclosed by his verified return to said search-warrant, thereafter rendered, one gallon of whiskey, seven pints of home brew beer, one and one-half gallons of gin, which, under the specific language of said search-warrant, he did lawfully seize, with their containers, and at the same time and place, and with his sole and only authority the powers conferred by the search-warrant aforesaid, and the National Prohibition Act, he, acting under and by virtue of the authority conferred by said search-warrant, issued under and by authority of the provisions of the said National Prohibition Act, did unlawfully exceed the powers conferred by the National Prohibition Act, and the express limitations of said search-warrant, by then and there seizing and taking into his possession the articles of personal property itemized in paragraph I hereof, and did on the same day make return on said search-warrant to the said United States Commissioner of a portion of the articles so seized, and the said United States Commissioner did thereafter certify the whole of said proceedings to the above-entitled court, in a cause therein pending entitled: "United States of America, Plaintiff, v. George Lewis, Defendant."

V.

That the property so seized and removed from

the said premises, as described in paragraph I hereof, consists of apparatus and trade fixtures, not embraced within the scope of the provisions of the National Prohibition Act as being the subject of seizure upon a violation of its terms concerning the unlawful possession of intoxicating liquor, but, notwithstanding the premises, the said Ben Holter, National Prohibition Enforcement Officer, after the seizure of said property was made by him as aforesaid, did deliver possession thereof to the United States Marshal for the District of Montana, as this answering libelee is informed and believes, and therefore states as a fact, prior to the [10] filing of the libel of information herein.

VI.

Your claimant, Edward Ryan, alleges that on the said 24th day of February, 1930, when the seizure of said personal property, apparatus and trade fixtures was made by the said Ben Holter, Prohibition Officer, he was the owner and entitled to the possession of all thereof; that he continued to be and was the owner and entitled to the possession thereof when the libel of information was filed herein, and now is the owner and entitled to the immediate possession thereof; that none thereof was, or is, designed for the manufacture of intoxicating liquor, or intended for *us* in violating the provisions of the National Prohibition Act, and none thereof is designed for use as containers of intoxicating liquor, but all thereof, at and prior to the time of its seizure aforesaid, was used as apparatus and trade

fixtures for the purpose of operating, running and conducting a soft drink parlor, including cigars, cigarettes and tobacco.

VII.

Your claimant specifically denies that all or any of said property was seized, or claimed to have been seized, or to be the subject of forfeiture for any violation of the Internal Revenue laws of the United States of America, in particular, for a violation of Section 1185, Title 26, U. S. Codes.

VIII.

This claimant denies the allegations of said libel of information not hereinabove specifically admitted or denied.

IX.

Your claimant further alleges that at the time of the filing of the libel of information herein the libelee, George Lewis (*alias* Ed Davis), had not been, and at the time of the filing of this Answer, defense and claim, has not been, convicted of the crime charged against him in the libel of information herein, and he has not been charged with nor convicted of any fraud of the Internal Revenue laws of the United States of America justifying the seizure of said property, or the institution of any libel [11] of information against the same or any part thereof, or at all, either for a violation of the Internal Revenue laws of the United States of America, of of the National Prohibition Act.

X.

That by virtue of the premises your claimant, Edward Ryan, as owner of said property, apparatus and trade fixtures, alleges he is entitled to an immediate return thereof, attached and in place, restored and affixed, as they were at and prior to the time of their seizure aforesaid.

WHEREFORE, claimant, Edward Ryan, prays that he be decreed to be the owner and entitled to the immediate possession of the articles, apparatus and trade fixtures itemized in paragraph I hereof; that they be restored to his possession at said number 7 West Galena Street, Butte, Montana, from which place they were removed, and that they be restored therein, attached and affixed, and therein deposited, as the same were at the time of the seizure thereof.

General relief.

EDWARD RYAN,
Claimant.

GEORGE D. TOOLE,
C. S. WAGNER,
Attorneys for Claimant. [12]

Duly verified.

Filed April 21st, 1930. [13]

[Title of Cause.]

MINUTES OF COURT—MAY 20, 1930—TRIAL.

This cause came on regularly for trial this day, the District Attorney appearing for the United

States, and Geo. D. Toole and C. S. Wagner, appearing for Edward Ryan, Claimant. Thereupon the following named persons were duly empaneled, accepted and sworn as a jury to try the cause, viz.: Fritz Lueck, James J. McGrath, W. F. Dudley, William B. Lyons, Erick Nelson, Ira M. Wagner, Edward A. Yeager, F. J. Peppin, J. E. Shaw, Andrew Halonen, Thos. J. O'Connor, and John Gaffney. Thereupon Geo. W. Doyle, C. A. Olson and Ben Holter were sworn and examined as witnesses for the United States, whereupon the United States rested. Thereupon Edward Ryan was sworn and testified in his own behalf, and the files in criminal case No. 2449 were introduced in evidence, whereupon claimant rested.

Thereupon plaintiff moved for a directed verdict in its favor and against the claimant for the reason that it is admitted by the answer that intoxicating liquor and the personal property sought to be libelled were found in the same place, room and building, and that there were no revenue stamps on the containers of liquor showing payment of tax on intoxicating liquor, and the burden is on the claimant to prove payment of the tax.

Thereupon the claimant moved the court for a directed verdict in his favor and against the United States for the reason that the United States having heretofore indicted the defendant Lewis herein under the National Prohibition Act, cannot now proceed to libel property seized under the revenue laws of the United States.

Thereupon, by agreement and consent of the parties, a jury was at this time duly waived and the cause left to the court for decision, the arguments being continued until May 27, 1930. Thereupon the jury was excused from further consideration of the case. [14]

[Title of Cause.]

MINUTES OF COURT—MAY 23, 1930—ORDER FORFEITING BONDS.

The defendants in the above-entitled cases were duly called for arraignment, plea and trial this day, and failing to appear, on motion of the District Attorney, Court ordered that the default of the said defendants be and hereby is duly entered herein; that the defendants' bonds be and are forfeited and bench warrants ordered issued for their arrest, new bonds being fixed at $500.00 each.

Whereupon on motion of the District Attorney, it is considered by the Court that for the defaults aforesaid, the said defendants and their bondsmen forfeit and pay to the United States the amount of said defendants' bonds herein, unless they appear before this Court and show sufficient cause to the contrary. The usual writs of *scire facias* were ordered issued accordingly. [15]

[Title of Cause—Nos. 545, 552.]

MINUTES OF COURT—MAY 29, 1930—ORDER OF ENTRY FOR DECREE.

These causes heretofore duly heard and submitted to the Court came on regularly for the judgment and decision of the Court. Thereupon, after due consideration, court filed its written decision and ordered that a decree be entered in favor of the United States in each case. [16]

[Title of Court and Cause—Nos. 545, 552.]

OPINION.

Libels to establish forfeiture and to condemn certain personal property for that the articles were in buildings wherein intoxicating liquors were possessed for sale without payment of the taxes due thereon, with design to avoid payment of the tax. Claimants other than the defaulting taxpayers appear and defend.

In the Lewis case, it appears the premises were the usual soft drink establishment wherein Lewis and others were retailing "moonshine whiskey for beverage purposes, and search disclosed the usual trivial stock on hand discoverable, viz.: One gallon of the "moon," *on* and a half gallons of gin, and twenty-seven pints of home brew beer. The con-

tainers were without tax stamps, but the very existence of such liquors is sufficient evidence of internal revenue taxes due and unpaid. Lewis and another were arrested and all articles were seized. Those arrested were prosecuted for violation of the National Prohibition Act, Lewis defaulted, the other plead guilty, and this proceeding was instituted. The arrests and seizure were by prohibition agents.

In the Anderson case, the facts are practically likewise.

Section 1185, T. 26, U. S. C. A., provides that any articles [17] on which internal revenue taxes are imposed, in possession for the purpose of being sold with design to avoid payment of the tax, may be seized by a collector specially authorized by the Commissioner of Internal Revenue, and forfeited to the United States; and that all personal property whatsoever in the building or inclosure wherein said articles are found, may also be so seized and forfeited.

All persons know these liquors are subject to tax; that in existence and being sold for beverages, the taxes are due and unpaid, and the whole unlawful, the sellers are proceeding secretly, to avoid detection by Government, and so, to defeat collection of the tax. They are incited by several evil designs and intents. The claimants argue, however, that this internal revenue statute is repealed by Sec. 39, T. 27, U. S. C. A., which provides that liquor unlawfully possessed and all property designed for unlawful manufacture shall be destroyed

unless the court orders otherwise, if not by Section 34, Id., providing for abatement of liquor nuisances. Various cases are cited to the contention that the internal revenue statutes are thus impliedly repealed by the Prohibition Act. In the beginning many were inclined to so hold. See U. S. vs. Herter, 24 Fed. (2d) 112; Id., 30 Fed. (2d) 970.

Congress applied a sharp corrective rap over the knuckles by the Willis-Campbell Act. None the less, again is some inclination manifested to avoid its intent by construction, perhaps calling for new and more emphatic legislation. The Act last aforesaid provides that despite the Prohibition Act, the internal revenue laws "continue in force. . . . except such provisions of such laws as are directly in conflict with" the Prohibition Act. It is obvious there is no direct or any conflict between Section 1185, *supra,* and Sections 34, 39, *supra,* of the Prohibition Act.

See U. S. vs. One Ice Box, et al., 37 Fed. (2) 120. The Waterloo etc. Corp., case, recently decided by the C. C. A. 2d Circuit, not yet reported. [18]

The Government's case is made out, the articles were forfeited and now condemned, and decrees are rendered accordingly. May 29th, 1930.

BOURQUIN, J.

Filed May 29th, 1930. [19]

[Title of Cause—Nos. 545, 552.]

MINUTES OF COURT—MAY 31, 1930—ORDER GRANTING THIRTY DAYS TO PREPARE, SERVE AND FILE BILL OF EXCEPTIONS, ETC.

On motion of George D. Toole, Esq., attorney for the libelee George Anderson and for claimant Edward Ryan, Court ordered that the exceptions of such parties to the ruling and decision of the Court in said cases be and hereby is duly noted. Thereupon on motion of Mr. Toole, Court ordered that said parties be granted 30 days within which to prepare, serve and file a bill of exceptions herein, and bond on stay of execution was ordered fixed at $500.00, and 3 days granted to furnish the same. [20]

In the District Court of the United States, District of Montana, Butte Division.

No. 545.

UNITED STATES OF AMERICA,

Libelant,

vs.

GEORGE LEWIS (*alias* ED. DAVIS) and 1 Brunswick Balke Bar, etc.,

Libelees,

and

ED. RYAN,

Claimant.

DECREE.

This cause came on regularly to be heard on the 29th day of May, 1930, the United States of America being represented by Howard A. Johnson, Assistant United States Attorney for the District of Montana, and the claimant herein Ed. Ryan being represented by George D. Toole, his attorney, and the libelee George Lewis having been duly served with process herein but having made default, and thereupon, upon proof being submitted and upon consideration thereof.

The Court found that all the allegations in the libel of information herein are true, and that the libelant is entitled to have forfeited to it the said property in said information described.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That said 1 Brunswick Balke bar and back bar complete with mirrors, 1 Pick & Co. electric water heater, 1 Hamilton Beach electric mixer, #10M602419A, 1 National cash register, size 1086, #S297932, D. D., 1 Regulator wall clock, 1 settee, 1 card table, 1 4-ft. showcase, 3 wire back chairs, 4 cuspidors, 1 14-ft. iron floor mat, 1 cigar case top and 3 sides broken, 2 davenport ends and 1 davenport base (2 pieces), 1 davenport back, 1 floor mat, 1 back bar in 3 sections, 1 mirror frame, 2 mirrors, 11 pieces marble, 2 pieces back bar top, 2 end posts, 1 wash rack (3 sections), 2 pieces molding, 1 card table, 1 clock, 2 small posts, 3 iron chairs, 1 bar

front and ends (3 pieces), 1 large picture, 1 bar top and 4 cuspidors, now in the custody of the United States Marshal for the District of Montana be, and the same is hereby forfeited to the United States of America.

2. That the United States Marshal for the District of Montana be and he is hereby ordered to sell said personal property at public auction to the highest bidder for cash, at the Jones Transfer & Storage Company, Butte, Montana, after due notice of said sale by publication of notice thereof in one issue of the "Daily Post," Butte, Montana, at least 15 days prior to the date of said sale, and by posting copies of said notice in three public places in Butte, Mont.

3. That the libelant, the United States of America, do have and recover from the libelee George Lewis and claimant Ed. Ryan its costs and disbursements herein expended, taxed in the sum of $38.02.

Dated and entered this 10th day of June, 1930.

WITNESS, the Hon. GEORGE M. BOURQUIN, Judge of said Court, in the City of Butte, Montana.

C. R. GARLOW,
Clerk. [21]

[Title of Court and Cause.]

DRAFT OF PROPOSED BILL OF EXCEPTIONS OF EDWARD RYAN, CLAIMANT.

BE IT REMEMBERED, That this claim came on regularly for trial before the Honorable George

(Testimony of George W. Doyle.)

M. Bourquin, Judge of the District Court of the United States for the District of Montana, sitting with a jury, on the twentieth day of May, 1930, at Butte, Montana. Hon. Wellington D. Rankin, United States Attorney for the District of Montana, and Howard A. Johnson, Assistant United States Attorney, appearing for the libelant; and George D. Toole and C. S. Wagner appearing for the claimant, Edward Ryan. No appearance for George Lewis, libelee. Whereupon the following proceedings were had, orders made, objections interposed, rulings made, exceptions taken, evidence introduced, and trial upon the merits had, to wit:

TESTIMONY OF GEORGE W. DOYLE, FOR LIBELANT.

GEORGE W. DOYLE, a witness for libelant, being duly sworn, testified: [22]

Direct Examination by Mr. JOHNSON.

My name is George W. Doyle, Prohibition Agent, Civil Service. I was at the premises, No. 7 West Galena Street, in Butte, Montana, on February 3d of this year. Carroll Olson was with me at that time. We purchased a number of drinks, intoxicating liquor, moonshine. It was a soft drink parlor, operated as a saloon, mostly used for the sale of liquor. Bar about twenty-five feet long, and a back bar, mixer and water heater, and I think there was a short showcase with just a few cigarettes in that, I believe; couldn't see into that very good. I do not know exactly how long the place had been run-

(Testimony of George W. Doyle.)

ning. Its reputation was bad with reference to selling and keeping intoxicating liquor. I should say I was there about fifteen minutes. The kind of liquor I bought was moonshine whiskey.

Cross-examination by Mr. WAGNER.

The purchase was made on the third of February. Later, I made affidavit to that effect. I said I made the purchase from John Doe Eddy. I do not know who he is.

Witness excused.

TESTIMONY OF CARROLL A. OLSON, FOR LIBELANT.

CARROLL A. OLSON, a witness for libelant, being duly sworn, testified:

Direct Examination by Mr. JOHNSON.

My name is Carroll A. Olson, Prohibition Agent, Civil Service. I was with Doyle on February 3d of this year when he went to the premises, 7 West Galena, in this city. Purchased, with Agent Doyle, one round of moonshine whiskey, from a man by the name of Eddy. This man was standing behind the bar. We were in front of the bar. He got the liquor from under the bar. Set a bar bottle on the bar. There was in the premises, other than fixtures, two or three wire back chairs, small showcase used for cigars and cigarettes, near the end of the bar, between the bar and the [23] telephone.

The COURT.—I believe the answer in this case admits the articles were there.

(Testimony of Carroll A. Olson.)

Mr. JOHNSON.—Yes, your Honor, it does.

The WITNESS.—There was a cash register behind the bar. The sales for the liquor were rung up in the cash register. I can recall but one card table. There was a clock on the wall.

Witness excused.

TESTIMONY OF BEN HOLTER, FOR LIBELANT.

BEN HOLTER, a witness for libelant, being duly sworn, testified:

Direct Examination by Mr. JOHNSON.

My name is Ben Holter. I am a Federal Prohibition Agent, Civil Service. Been in the service practically ten years. I searched the premises, 7 West Galena Street, Butte, Montana, on February 24th, 1930, under authority of a search-warrant, Federal search-warrant. I found George Lewis there at the time. He is the one as defendant in this case.

The COURT.—When did you say you searched this?

Mr. HOLTER.—Feb. 24th, under search-warrant.

The COURT.—This year?

Mr. HOLTER.—This year, yes.

The COURT.—What did you find there?

Mr. HOLTER.—I found two quart bottles filled with moonshine whiskey; found a gallon jug under the bar about half full of moonshine whiskey. I

(Testimony of Ben Holter.)

found two quarts or bar bottles, fifths of gallons; one gallon jug standing on the floor under the bar filled with gin, and twenty-seven pints—pint bottles of home brew beer.

There were no internal revenue stamps on any bottles. They were all jugs and bar bottles, moonshine whiskey. It wasn't a distillery or warehouse or place of business of rectifier or wholesale liquor distillery. It was a joint. Just the usual barroom. I have a list of the property I seized, and I had [24] stored.

Q. I will read it and see if it is all here. 1 Brunswick Balke bar and back bar complete with mirrors; 1 Pick & Co. electric water heater; 1 Hamilton Beach electric mixer, No. 10M602419A; 1 National Cash register, size 1086, No. S297932 D. D.; 1 Regulator wall clock; 1 settee; 1 card table; 1 four-foot showcase; 3 wire back chairs; 4 cuspidors; 1 fourteen-foot iron floor mat; 1 cigar case, top and 3 sides broken; 2 davenport ends and 1 davenport base, 2 pieces; 1 davenport back; 1 floor mat; 1 back bar in 3 sections; 1 mirror frame; 2 mirrors; 11 pieces marble; 2 pieces back bar top; 2 end posts; 1 wash rack; 3 sections; 2 pieces moulding; 1 card table; 1 clock; 2 small posts. What are they?

A. Two small posts under the back bar, I guess where the back bar projects, to hold it.

Q. 3 iron chairs; 1 bar front and ends, 3 pieces; 1 large picture; 1 bar top; and 4 cuspidors?

A. That's what I seized. Yours are in pieces,

(Testimony of Ben Holter.)

mine are whole. (Referring to the *fact* bar, davenport, etc., were described as taken apart.)

When I went in with my warrant I observed George Lewis selling drinks to the customers at the bar. I was standing behind the bar, and the customer was in front. I observed him make a sale. He got the liquor to make the sale from behind the bar from a bar bottle. One of the bottles I have already mentioned. The furniture was all in one room—just one large room with a small partition—little old-fashioned old swinging door, old style. It was in this old-fashioned barroom that this material was. It was seized there. It was used in connection with the business of the barroom.

Cross-examination by Mr. WAGNER.

Q. Mr. Holter, before you went there on the 24th day of February, 1930, you went to United States Commissioner L. M. Van Etten, did you not, and thru him completed an application for search-warrant? A. I did not. Q. You didn't go before [25] Van Etten? A. No, sir. Q. Is this your signature on this paper that I hand you? A. Yes, but the affidavit is still there. Q. That's your signature? A. Yes. Q. This paper I hand you is entitled: "Complaint and Application for Search-warrant, Ben Holter, being first duly sworn according to law." Starts out that way? A. Not that day. Q. You swore to that before L. M. Van Etten on that date, didn't you? A. I made application for it. Q. That's your signature, and that's L. M.

(Testimony of Ben Holter.)

Van Etten's signature and seal of office? A. Yes. Q. Didn't you on that day before you went, make application for a search-warrant before L. M. Van Etten? A. Yes. Q. On this affidavit of yours? A. Yes. Q. Which is in the files in an action pending in this court, No. 2449, entitled: "United States of America, Plaintiff, *versus* George Lewis, Defendant"? A. Yes. In that application for a search-warrant I based my grounds for the warrant upon the affidavit theretofore made by one Carroll A. Olson on the 6th day of February, where he says: "Upon those premises on the 3d day of February he purchased from John Doe Eddy." That is how Van Etten, the United States Commissioner, came to issue the search-warrant. The paper you hand me in criminal case No. 2449, pending in this court, is the search-warrant that Mr. Van Etten, United States Commissioner, gave to me, and it is the paper upon which I made my return. Q. And it was under and by virtue of this warrant that you made the seizure? Mr. JOHNSON.—Objected to as incompetent, irrelevant and immaterial. The COURT.—You may answer, overruled. A. Yes. Q. Did you read the search-warrant before you made the seizure? A. Read part of it—may not have read it all. Q. I will get you to state whether this search-warrant doesn't command you to search, and that the warrant itself specifies what you shall search for? The COURT.—That shows that, itself, Counsel. Mr. WAGNER.—Yes, your Honor, I just wanted to know whether or not he knew the

(Testimony of Ben Holter.)

authority he had under the search-warrant. [26] The COURT.—Proceed. I seized some liquor there, and in my return I specified that I seized one gallon of moonshine whiskey, one and one-half gallons of gin, and twenty-seven pints of home brew. The liquor and the home brew is all destroyed, but one-half pint bottle that stood as evidence. I destroyed it right then and there. I found George Lewis in charge of the place and arrested him. I arrested him for violation of the law. Q. Violating the Prohibition Law? Mr. JOHNSON.—Objected to as incompetent, irrelevant and immaterial. The COURT.—Well, in the paper this morning, you know what the Supreme Court says. If not material, the objection will be overruled at this time. Q. He was afterwards admitted to bail and appeared in this court, was he not? A. I believe he was. I know this gentleman, Edward Ryan. I did not see him there on the day I made this seizure. Q. Why did you not save the liquor instead of destroying it? A. Why would I save it? Mr. JOHNSON.—Objected to as immaterial. The COURT.—You may answer why you didn't *save*. A. Where would I store it—sample is all? I did not gauge the liquor or home brew to see what its alcoholic content was. I can't gauge home brew. I know exactly how many gallons and how many pints I seized. The beer bottles were pints, bar bottles they were, supposedly what is commonly known as pints. Q. You made no effort at that time to ascertain whether or not there was a vol-

(Testimony of Ben Holter.)

ume of alcohol or whiskey, or volume of home brew, to see how much taxes were due and unpaid. Mr. JOHNSON.—Objected to as immaterial. The COURT.—You may answer. Q. You didn't at that time carefully gauge the contents of those different containers for the purpose of ascertaining what Internal Revenue taxes, if any, were due and had not been paid? A. Do you mean proof of spirits? Q. Answer the question. The COURT.—He didn't understand you. Q. You destroyed this liquor immediately upon its seizure? A. After filling a half-pint bottle. Q. You didn't have any Internal Revenue taxes on [27] your mind at that time, did you? Mr. JOHNSON.—Objected to as immaterial. The COURT.—You may answer, overruled. A. No. It was whiskey I poured out. I poured it out because I found this man in possession selling intoxicating liquor over the bar. That certainly was what I arrested him for. That's what I made the seizure for. Had a search-warrant to search the place as well, although I didn't need it.

Redirect Examination by Mr. JOHNSON.

That was intoxicating liquor. I said a minute ago I didn't need a search-warrant. I meant by that an open violation—man selling a drink over the bar as I walked into the place. Had a customer. Had a bottle on the bar. One had just filled his glass and set the bar bottle down, and Lewis seized the bar bottle and set it down under

(Testimony of Ben Holter.)

the bar. The place had the reputation of selling whiskey right along since it opened. I should say about three or four months now—Number 7 is. I stated a while ago I had never seen this claimant, Edward Ryan, in the place, and didn't see him there at the time. I made that statement. I have seen him in the place previous to the search. I didn't see Ryan behind the bar. He seemed to be one of the owners. Seen him there every morning—generally every morning. See him *along* the door when I was going to work. He seemed to have an interest in the place.

Mr. WAGNER.—At this time we ask to introduce in evidence in this case the files of this court in cause No. 2449, entitled: "United States of America vs. George Lewis, defendant." We first offer the affidavit for the search-warrant * * * the complaint and application for a search-warrant, search-warrant and return. The COURT.—What is the object of this? Mr. WAGNER.—The object of all this, I will state to your Honor, is that the claimant expects to show by the records in this criminal action that the proceedings were instituted under the National Prohibition Act. [28]

The COURT.—They may be considered in evidence. Mr. WAGNER.—We next offer in evidence in the same case the complaint under which the person in charge, George Lewis, was arrested, and call the Court's attention that the charge was possession of intoxicating liquor. The COURT.—Admitted as part of the same exhibit. Mr. WAG-

NER.—Wish to show further that the grand jury returned a true bill against George Lewis, charging him with a violation of the National Prohibition Act, and that the case against him under this indictment is on the calendar of this court for trial on next Friday. The COURT.—Part of the same exhibit—put them all in together.

Said documents so received in evidence are as follows, to wit:

I. AFFIDAVIT FOR SEARCH-WARRANT.

United States of America;
District of Montana,—ss.

N. B. This affidavit recites that on the 3d day of February, 1930, affiant, Carroll A. Olson, purchased from John Doe Eddy, in charge "of that certain room, place and building more particularly described as a saloon on the ground floor of a certain three-story building at number 7 West Galena Street, in the City of Butte, State of Montana—* * * a quantity of intoxicating liquor, to wit, moonshine whiskey, for which he paid the said John Doe Eddy the sum of twenty-five cents per drink, while at and within the above-described premises * * * that the said John Doe Eddy * * * were keeping stored in and about said premises a quantity of intoxicating liquor, which said intoxicating liquor was kept, possessed and sold in and about said place by them in violation of the law of the United States of America, and particularly Title II of the National Prohibition Act. Verified

before L. M. Van Etten, United States Commissioner, February 6th, 1930.

II. COMPLAINT AND APPLICATION FOR SEARCH-WARRANT. [29]

Before L. M. VAN ETTEN, United States Commissioner for the District of Montana.

United States of America,
District of Montana,—ss.

Ben Holter, being first duly sworn on oath, deposes and says: That he is a Federal Prohibition Agent; that he makes this complaint and affidavit for the purpose of procuring a search-warrant, authorizing the search of the premises herein described; that he has just and probable cause to believe, and does believe, that the intoxicating liquor is now unlawfully manufactured, kept for sale, sold, used, and given away and disposed of, in violation of Title II of the National Prohibition Act, at and within those certain premises, buildings, cellars, sub-cellars, basements, rooms, outbuildings, closets, safes, desks, drawers, containers, trunks and other receptacles, in connection therewith, in that certain room, place or building more particularly described as: a saloon on the ground floor of a certain 3 story brick building at No. 7 West Galena St., in the City of Butte, State of Montana. (Here follow reasons for applicant's belief that the intoxicating liquor laws were being violated at said premises.)

BEN HOLTER,
Applicant.

Subscribed and sworn to and filed February 24th, 1930.

III. COMPLAINT.

United States of America,
District of Montana,
Butte Division,—ss.

Before me, L. M. Van Etten, a United States Commissioner for the District of Montana, Butte Division, personally appeared Ben Holter, who being first duly sworn, deposes and says that on February 24th, 1930, at Butte, in the division and district aforesaid, George Lewis, 7 W. Galena, unlawfully and knowingly did possess intoxicating liquors in a place of business. Contrary to the form of the statute in such cases made and provided, to wit, Section 29,, Title 2, of the National Prohibition Act. Complainant further says that he [30] has reason to believe and does believe that, etc.

BEN HOLTER.

Sworn to and subscribed before L. M. Van Etten, United States Commissioner, February 24th, 1930.

IV. REPORT OF TRIAL.

N. B. Report of trial shows that on the 24th day of February, 1930, Ben Holter filed in the office of L. M. Van Etten, United States Commissioner for the District of Montana, his affidavit charging George Lewis as above. The Commissioner did find the defendant probably guilty, and did fix his recognizance to appear in the above-

entitled court on the first day of the next term, 1930, which, with the papers above referred to, filed in cause number 2449 on March 18th, 1930.

V. INDICTMENT.

Number 2449. United States District Court, District of Montana, Butte Division.

United States of America, Plaintiff, vs. George Lewis, *alias* Ed. Davis, and Ed Duplice Endorsed: A true bill. Signed by Frank Knight, Foreman of Grand Jury. Filed in open court April 25th, 1930.

N. B. Indictment in usual and standard form. First count charges that on the 3d day of February, 1930, one George Lewis * * * at and within that certain 3-story brick building occupied by the defendant as a soft drink parlor, located at 7 West Galena Street, in the City of Butte * * * did then and there wrongfully and unlawfully sell intoxicating liquor, to wit, whiskey * * * without then and there first obtaining a permit from the Commissioner of Internal Revenue so to do. (A prior conviction is attached to this count.) Second count charges unlawful possession of intoxicating liquor, to wit, whiskey, intended for use in violation of Title II of the National Prohibition Act at the time and place named in count one. (To this count are appended allegations of former convictions.) Third count same as second count except the date alleged is the 24th day of February, 1930. (To [31] this count are appended allegations of prior convictions.) Fourth count charges that on or

about the 24th day of February, 1930, George Lewis * * * at the place above designated did "Unlawfully maintain a common nuisance, that is to say, a place where intoxicating liquor was sold, possessed and kept in violation of Title II of the National Prohibition Act."

VI. MINUTES OF THE COURT.

Friday, May 23d, 1930. Sixth day May Term, 1930. Number 2449. United States vs. George Lewis, *alias* Ed. Davis. Minutes show defendant and others were duly called for arraignment, plea and trial this day, and failing to appear, on motion of District Attorney Court ordered default of defendant George Lewis and others entered, and his bond forfeited and bench warrant issued, and new bond fixed at Five Hundred Dollars.

VII. SEARCH-WARRANT.

Before L. M. VAN ETTEN, United States Commissioner for the District of Montana.

N. B. Standard form of search-warrant. Premises to be searched: "A saloon on the ground floor of a certain 3-story brick building at No. 7 West Galena Street in the City of Butte, State of Montana. Ground of issuance: purchase on the 3d day of February, 1930, from one John Doe Eddy by Carroll A. Olson: A quantity of intoxicating liquor, to wit: moonshine whiskey, for which he paid the said John Doe Eddy the sum of twenty-five cents per drink while at and within the above-described premises. And that a quantity of intoxicating

liquor was and is kept, possessed, stored, sold and used in and upon said premises in violation of Title II of the National Prohibition Act." The warrant further recites that the Commissioner found that there was probable cause to believe that intoxicating liquors were kept for sale and sold in said premises, and commands: "Now, therefore, you are hereby commanded in the name of the President of the United States, to enter said premises in the daytime, with necessary and proper [32] assistance and there diligently search for said intoxicating liquors, vessels, bottles and containers of said liquors, whether in the said premises or on the person of the said keeper or other persons present and all utensils, apparatus and materials for the manufacturing of intoxicating liquors, or for the storing and possessing of the same and all evidence of crime, of manufacturing, purchasing, possessing, selling or disposing of intoxicating liquors, as may be therein found in the form of books, receipts, recipes for manufacturing or compounding intoxicating liquors, receipts, bills of lading, notes, checks, liquor labels, letters and other such evidences, whether found in the premises or on said persons, and to report any act concerning same, as required by law of you, and to seize, secure and bring the said property with a return of your actions thereunder to the undersigned. You are further commanded that in the event you seize or take said liquors or other property or evidence under this warrant, to give a copy of this warrant together with a receipt for each and everything so seized,

itemized in detail as nearly as may be, to the person from whom it is taken by you or in whose possession it is found, or in case no person is present to leave a copy of this warrant with a receipt as aforesaid, in the place from which the said property is taken, and you are commanded to execute and return to the undersigned this warrant with your return thereon and inventory of all property taken, duly made and verified by you within ten days from date hereof. Given under my hand and seal at my office this 24th day of February, A. D. 1930.

[Commissioner's Seal] L. M. VAN ETTEN,
United States Commissioner for the District of Montana.

United States of America,
District of Montana,—ss.

RETURN.

I hereby certify that I received the within warrant on the 24th day of February, A. D. 1930, and that by virtue of said warrant and authority contained therein, I did this —— day of ————, 1930, search the premises described therein and found and seized the following described liquors, properties [33] and utensils, possessed and unlawfully used for the manufacture, sale and possession of intoxicating liquor, to wit: 1 gallon moonshine whiskey; 1½ gallons gin; 27 pints home brew beer; 1 Pick & Co. electric water heater; 1 Hamilton Beach electric mixer, #10M.602419 A.; 1 Regulator wall clock; 1 National cash register, size 1086, #S.297932, D.D.; 3 wire back chairs; 1 card table;

(Testimony of Edward Ryan.)

1 settee; 1 Brunswick Balke bar and back bar, complete with mirrors; 4 brass cuspidors; 1 14-foot iron floor mat. I hereby certify that I then and there served said warrant by giving notice of the contents thereof and gave a copy of the within warrant together with a complete inventory of the property seized to Geo. Lewis, who was present and in possession of the property seized.

I, Ben Holter, the officer by whom this warrant was executed, do swear that the above statement and inventory contains a detailed and true account of all property seized and acts done by me under authority of said warrant.

BEN HOLTER.

Subscribed and sworn to before me this 24th day of February, A. D. 1930."

TESTIMONY OF EDWARD RYAN, IN HIS OWN BEHALF.

Direct Examination by Mr. TOOLE.

My name is Edward Ryan. I am the person who interposed an answer and defense in these proceedings. I am familiar with the property described in the warrant and monition in this case and in these proceedings. I was the owner of that property on the 24th day of February, 1930. I had owned it since the previous September, and I still own it. It was situated at 7 West Galena on the 24th day of last February, when it was seized. The property consisted of 1 electric water heater; 1

(Testimony of Edward Ryan.)

mixer; 1 National cash register; Regulator wall clock; 3 chairs; 1 card table; 1 settee; 1 bar and back bar; 4 cuspidors; wire floor mat; cigar case—all the same as described in the warrant and monition—and it all belonged to me at the time it was taken out. The back bar was wired to the wall and clamped to the floor, and the front bar was clamped and screwed into the floor. The cigar case was affixed [34] to the wall and floor.

Cross-examination by Mr. JOHNSON.

I wasn't the proprietor of the place at that time, I was the owner of the property seized. I had no interest in the place. I was in and out there quite a bit. George Lewis was the proprietor of the place. He was not working for me. He was engaged in the business of running a soft drink place. I did not get any rent for the place. He paid me $50 a month for the use of my furniture. Keefe, I guess Keefe estate, owned the premises. I did not rent them. I was not about there every day, or pretty near every day. Wouldn't be around for a week or so. My business is clerk. I haven't worked for a couple of months, been in Harlowton. Prior to that time I was selling radios for Joe Marsh of South Main Street. I worked and reported most every day throughout the country selling radios. Since that time I have been in Harlorton for about two months.

Whereupon, the evidence being concluded, and the parties rested, libelant moved the Court for a directed verdict as follows:

(Testimony of Ben Ryan.)

Mr. JOHNSON.—At this time we wish to make a motion for a directed verdict; instruct the jury to return a verdict for libelant and against libelees, on the ground and for the reason that the intoxicating liquor and the personal property sought to be condemned were found and seized in the same place and building; for the reason that the presumption of law is, in the absence of stamps showing payment of internal revenue taxes, that the taxes have not been paid; and for the reason that there is ample proof of all the essential allegations of the libel of information under the pleadings.

The COURT.—Any issue of fact?

Mr. WAGNER.—We also desire to make a motion for a directed verdict in favor of the claimant, Mr. Ryan, upon the ground and for the reason the proceedings were instituted under the National Prohibition Act, Title 27, U. S. Codes. The charge made against [35] the man in possession was specifically stated in the complaint sworn to and filed against the defendant that he was unlawfully in possession of intoxicating liquor, in violation of the National Prohibition Act, Title 27, United States Codes. This was followed up by the defendant Lewis appearing before the United States Commissioner and entering a plea of not guilty to the charge, whereupon he was admitted to bail. Thereafter the Government presented the facts in its possession to the Grand Jury, and the Grand Jury returned a True Bill against Mr. Lewis for violation

of the National Prohibition Act, and this case has been set for trial on next Friday.

The COURT.—I suppose you are working on the point having possession under the Prohibition Act? Qualifying on a point of law?

Mr. WAGNER.—A point of law.

The COURT.—I tell you what I think I should do—I will hear the case argued Tuesday, and you should get the law of it before the Court. You can waive this jury and leave it to me to decide.

WHEREUPON, counsel for both parties having agreed thereto, the Court made its further order as follows:

The COURT.—Let the record show at this stage of the case, the parties having each moved for a directed verdict, thus dispensed with the jury, and left it to the judgment of the Court, and further that they agree at this time to waive the jury and leave the matter to the discretion of the Court. The case will be set for argument some time later.

Gentlemen of the Jury that relieves you. You know a jury is primarily in a case to determine questions of fact. The Court determines questions of law. This case has taken such a turn. Nothing in it but to determine a question of law. You will be excused until to-morrow morning at 10 o'clock.

Mr. TOOLE.—Will your Honor fix a time during the present term in the City of Butte?

The COURT.—A week from to-day at 9:30 o'clock. [36]

Thereafter, and on the 27th day of May, 1930, said cause came on regularly for argument. The

libelant being represented by Howard Johnson, Assistant United States Attorney, and the claimant, Edward Ryan, being represented by his counsel George D. Toole and C. S. Wagner. Whereupon oral argument was received by the Court for and on behalf of both parties, and the arguments being concluded, the Court took the matter of its decision under advisement.

Thereafter, and on the 29th day of May, 1930, the Court filed its written decision herein holding that the liquors seized are subject to tax, and that: "it is obvious there is no direct or any conflict between Section 1185, (Title 26 U. S. Codes), and Sections 34 and 39 (Title 27 U. S. Codes) of the Prohibition Act."

"The Government's case is made out. The articles were forfeited, and now condemned, and decree rendered accordingly."

Thereafter, and on the 31st day of May, 1930, on application of George D. Toole, attorney for claimant, Edward Ryan, the Court ordered that the exception of the said Edward Ryan to the ruling and decision of the Court be, and it was, duly noted, and 30 days were granted within which to prepare, serve and file a bill of exceptions herein, and bond on stay of execution was ordered fixed at $500.

Now, within the time allowed by law and the order of the Court, the claimant, Edward Ryan, presents this his proposed bill of exceptions, and prays that the same may be signed, settled and allowed as such.

Dated June 9th, 1930.

GEORGE D. TOOLE,
C. S. WAGNER,
Attorneys for Claimant, Edward Ryan. [37]

Service acknowledged and copy received this 9th day of June, 1930.

WELLINGTON D. RANKIN,
United States Attorney for the District of Montana,

HOWARD A. JOHNSON,
Assistant United States Attorney,
Attorneys for Libelant.

STIPULATION RE SETTLING BILL OF EXCEPTIONS.

It is hereby stipulated and agreed by and between the United States of America, libelant, represented by its attorneys, Wellington D. Rankin and Howard Johnson, and the claimant, Edward Ryan, represented by his attorneys, George D. Toole and C. S. Wagner, that the above and foregoing is a full, true and correct statement and transcript of the proceedings and records introduced in evidence, had and held at the trial of said cause, and proceedings subsequent thereto, and no amendments are proposed by the libelant, but such amendments are hereby waived.

Dated this 11th day of June, 1930.

WELLINGTON D. RANKIN,
HOWARD A. JOHNSON,
Attorneys for Libelant.
GEORGE D. TOOLE,
C. S. WAGNER,
Attorneys for Claimant. [38]

CERTIFICATE OF JUDGE TO BILL OF EXCEPTIONS.

In pursuance to the above and foregoing stipulation, and having examined the records as hereinabove set forth, I hereby settle and allow the same as the statement of the case and bill of exceptions of Edward Ryan, claimant in libel action No. 545.

Dated this 14th day of June, 1930.

BOURQUIN,
Judge.

Filed June 16, 1930. [39]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes the claimant and appellant, Edward Ryan, in the above-entitled case, and files the following assignment of errors, upon which he will reply upon the prosecution of the appeal in the above-entitled case from the final judgment and decree

duly given and made and entered in the above-entitled case on the 10th day of June, 1920, in favor of the libelant and appellee herein and against the claimant and appellant herein forfeiting and condemning to the Government certain personal property seized at No. 7 West Galena Street, Butte, Montana, with certain intoxicating liquors, upon which taxes had not been paid, in violation of Section 1185, Title 26, U. S. Codes.

ASSIGNMENT OF ERROR No. I.

The court erred in holding and deciding: "It is obvious there is no direct or any conflict between Section 1185, *supra*, and Sections 34, 39, *supra*, of the Prohibition Act. (N. B. The Sections referred to are Section 1185, Title 26, U. S. Codes, and Sections 34 and 39, Chap. 2, Title 27, U. S. Codes . . . .). [40] The Government's case is made out, the articles were forfeited and now condemned; decrees are rendered accordingly"; for that the property described is not subject to forfeiture or condemnation either under the said section of the Internal Revenue laws or the sections of the National Prohibition Act referred to, or any other law or laws of the United States of America.

ASSIGNMENT OF ERROR No. II.

The court erred in holding and deciding the property described in the libel of information is forfeited and now condemned under the provisions of Section 1185, Title 26, U. S. Codes, for that when

the seizure of said property was made, to wit, on the 24th day of February, 1930, it was seized under a search-warrant issued by L. M. Van Etten, a United States Commissioner for the District of Montana, Butte Division, to Ben Holter, a National Prohibition Agent, acting as an officer of the court, and the libelee, George Lewis, was arrested in connection with said seizure for the unlawful possession of intoxicating liquor in violation of the National Prohibition Act, and thereafter an indictment charging the said George Lewis with the unlawful sale of intoxicating liquors; the unlawful possession of intoxicating liquors, and the maintenance of a common nuisance in connection therewith at said 7 West Galena Street, Butte, Montana, in violation of Chapter 2, Title 27, U. S. Codes, based upon his arrest as aforesaid, was returned by the grand jury, and the said George Lewis was held under bail thereunder in that certain criminal action pending in the above-entitled court No. 2449, entitled: "United States of America, Plaintiff, vs. George Lewis et al., Defendants," and the said cause was set for trial in the above-entitled court on the 23d day of May, 1930, and said cause being ready for trial was called for trial, and the said George Lewis, defendant, failing to appear, his bail was forfeited and a bench-warrant issued for his apprehension, all of which appears by the records [41] in said criminal cause received in evidence at the trial of this libel action, by reason whereof, the libelant herein elected unconditionally to proceed under the National Prohibition Act, and

not under any Internal Revenue statute, particularly not under Section 1185, Title 26, U. S. Codes.

ASSIGNMENT OF ERROR No. III.

The judgment and decree is contrary to law, for that the property condemned and forfeited is not the subject of seizure, forfeiture or condemnation under Section 1185, Title 26, U. S. Codes, or of the National Prohibition Act, or under any other law or laws.

ASSIGNMENT OF ERROR No. IV.

The judgment is contrary to law, for that the property seized, forfeited and condemned is not described in the search-warrant under which the seizure was made, as appears by the terms of said search-warrant and the return of the seizing officer thereon, introduced in evidence in this case.

WHEREFORE claimant and appellant prays that the said judgment and decree be reversed, with directions to the District Court of the District of Montana, Butte Division, to enter judgment and decree in favor of claimant and appellant in accordance with the prayer of his answer and defense to the libel of information herein.

Dated this 17th day of June, 1930.

GEORGE D. TOOLE,
C. S. WAGNER,
Attorneys for Claimant and Appellant, Edward Ryan.

Filed June 17th, 1930. [42]

[Title of Court and Cause.]

PETITION FOR APPEAL.

To the Honorable GEORGE M. BOURQUIN, District Judge:

The above-named claimant, Edward Ryan, feeling aggrieved by the decree rendered and entered in the above-entitled cause on the 10th day of June, 1930, forfeiting and condemning specified articles of personal property under Section 1185, Title 26, U. S. Codes, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which the decree was made, duly authenticated, be sent to the Circuit Court of Appeals for the Ninth Circuit under the rules of such court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of him be made.

Dated this 20th day of June, 1930.

GEORGE D. TOOLE,
C. S. WAGNER,
Attorneys for Claimant Edward Ryan. [43]

ORDER ALLOWING APPEAL.

Now, June 20, 1930, the claimant, Edward Ryan, having by his counsel heretofore, on the 31st day of May, 1930, applied to this Court for a supersedeas pending appeal, and the Court having fixed bonds for said purpose in the sum of $500, the foregoing petition for appeal is hereby allowed, and a good and sufficient bond in due form of law having been furnished and approved, the Clerk is hereby directed to stay the mandate of the decree made, rendered and entered herein pending the appeal of the said Edward Ryan, claimant, and until the further order of the Court.

BOURQUIN,
Judge.

Filed June 24th, 1930. [44]

[Title of Court and Cause—No. 545.]

BOND ON APPEAL.

Approved and filed June 24, 1930. [45]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,
District of Montana,
Butte Division,—ss.

To the Above-named Libelant, and to WELLINGTON D. RANKIN, United States Attorney for the District of Montana, and HOWARD A. JOHNSON, Assistant United States Attorney, Attorneys for Libelant:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, on the 19th day of July, A. D. 1930, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the District Court of the United States for the District of Montana, Butte Division, from a final decree signed, filed and entered on the 10th day of June, 1930, in that certain libel action No. 545, wherein the United States of America is libelant, and George Lewis (*alias* Ed. Davis), and one Brunswick bar and back bar, complete with mirrors, etc., are libelees, and Edward Ryan is claimant, and you are appellee, to show cause, if any there be, why the [48] decree rendered against the said appellant, Edward Ryan, claimant, as in said order allowing appeal mentioned, should not be corrected,

and why justice should not be done to the parties in that behalf.

WITNESS the Honorable GEORGE M. BOURQUIN, United States District Judge for the District of Montana, Butte Division, this the 24th day of June, A. D. 1930, and of the Independence of the United States of America the one hundred and fifty-fourth year.

BOURQUIN,
United States District Judge for the District of Montana.

Due and legal service of the above and foregoing citation is hereby acknowledged and copy received this 26th day of June, 1930, together with copy of assignment of errors.

WELLINGTON D. RANKIN,
United States Attorney for the District of Montana.
HOWARD A. JOHNSON,
Assistant United States Attorney,
Attorneys for Libelant and Appellee.

Filed June 26th, 1930. [49]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT ON APPEAL.

To the Clerk of the Above-entitled Court.

Please prepare transcript on appeal in the above-entitled case from the judgment duly given and made and entered on the 10th day of June, 1930, in favor of the libelant and against the claimant Edward

Ryan, and therein designate the parties on appeal as follows: Edward Ryan, Appellant, vs. United States of America, Appellee.

Therein include in the order named the records and files in the above-entitled case, and include also the parts of the records and files herein designated in criminal cause number 2449, United States of America, Plaintiff, vs. George Lewis, (*alias* Ed Davis), et al., Defendants. For brevity the records in each case will be referred to by number.

No. 545. 1, libel of information; 2, publication of notice of seizure; 3, publisher's affidavit of publication; 4, marshal's return of property seized; 5, answer and defense of Edward Ryan, claimant; 6, minutes of the trial, May 20th, 1930.

No. 2449. 7, minutes of the court of May 27th, 1930. No. 545, 8, minutes of the court May 29th, 1930; 9, opinion and decision of the court filed May 29th, 1930; 10, minutes of the court May [50] 31st, 1930; 11, the judgment and decree; 12, the bill of exceptions; 13, the assignment of errors; 14, petition for appeal and order allowing same; 15, the bond on appeal; 16, the citation, by copy, (attach and forward with the transcript the original citation); 17, a copy of this praecipe.

Append your certificate in due form of law, and state therein the cost of this transcript, and that the same has been paid by Edward Ryan, the appellant.

Dated this 26th day of June, 1930.

GEORGE D. TOOLE,
C. S. WAGNER,
Attorneys for Appellant.

Service of the foregoing praecipe acknowledged and copy received this 26th day of June, 1930.

WELLINGTON D. RANKIN,
United States Attorney for the District of Montana,

By HOWARD A. JOHNSON,
Assistant United States Attorney,
Attorneys for Appellee.

Filed June 26th, 1930. [51]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, C. R. Garlow, Clerk of the District Court of the United States for the District of Montana, hereby certify the foregoing transcript, consisting of 52 pages, contains a full, true and correct copy of the papers, records, proceedings had and orders entered in the cause entitled, "United States of America, Libelant, *versus* George Lewis, *alias* Ed Davis, and 1 Brunswick Bar and Back Bar, etc., Libelees; Edward Ryan, Claimant; No. 545 of the records and files of the District Court of the United States for the District of Montana, Butte Division, as required by the praecipe for transcript of record and on file in said cause, as appears by copy of said praecipe incorporated herein.

I do further certify that the original citation, with acknowledgment of service, together with ser-

vice of a *copy the* assignment of errors, is attached hereto.

I further certify that the costs of the foregoing transcript of the record, amounting to the sum of $7.40, have been paid in full by the appellant, Edward Ryan.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said court, at Butte, Montana, this the 27th day of June, 1930, in the year of our Independence, the one hundred fifty-fourth.

[Seal]

C. R. GARLOW,
Clerk.

By L. R. Polglase,
Deputy. [52]

[Endorsed]: No. 6184. United States Circuit Court of Appeals for the Ninth Circuit. Edward Ryan, Claimant of One Brunswick Bar, Complete With Mirrors, etc., Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed July 1, 1930.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

57 United States Circuit Court of Appeals for the Ninth Circuit

EDWARD RYAN, CLAIMANT OF ONE BRUNSWICK BAR, Complete with Mirrors, etc., appellant
vs.
UNITED STATES OF AMERICA, APPELLEE
No. 6184

UPON APPEAL from the District Court of the United States for the District of Montana

Proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit.

58 At a stated term, to wit, the October term, A. D. 1930, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the tenth day of November, in the year of our Lord one thousand nine hundred and thirty.

Present: Honorable Frank H. Rudkin, circuit judge, presiding; honorable Curtis D. Wilbur, circuit judge; honorable William P. James, district judge.

EDWARD RYAN, CLAIMANT OF ONE BRUNSWICK BAR, Complete with Mirrors, etc., appellant
vs.
UNITED STATES OF AMERICA, APPELLEE.
No. 6184

Order of submission

Ordered, appeal in above cause argued by Mr. C. S. Wagner, counsel for the appellant, and by Mr. Wellington D. Rankin, United States attorney, counsel for the appellee, and submitted to the court for consideration and decision.

59 At a stated term, to wit, the October term, A. D. 1930, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the seventeenth day of November, in the year of our Lord, one thousand nine hundred and thirty.

Present: Honorable Frank H. Rudkin, circuit judge, presiding; Honorable Curtis D. Wilbur, circuit judge; Honorable Frank H. Kerrigan, district judge.

EDWARD RYAN, CLAIMANT OF ONE BRUNSWICK BAR, COMplete with Mirrors, etc., appellant
vs.
UNITED STATES OF AMERICA, APPELLEE
No. 6184

Order directing filing of opinion and filing and recording of decree

By direction of the court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk and that a decree be filed and recorded in the minutes of this court in above cause in accordance with the opinion filed.

60 United States Circuit Court of Appeals for the Ninth Circuit

EDWARD RYAN, CLAIMANT OF ONE BRUNSWICK BAR, COMplete with Mirrors, etc., appellant,
vs.
UNITED STATES OF AMERICA, APPELLEE
No. 6184

UPON APPEAL from the District Court of the United States for the District of Montana

Before RUDKIN and WILBUR, Circuit Judges, and JAMES, District Judge

RUDKIN, Circuit Judge:

This was a proceeding by information to forfeit bar fixtures and other articles of personal property found in a soft-drink parlor where intoxicating liquors, in respect whereof a tax was then and there due and unpaid, were kept and sold. The proceedings were instituted under section 3453 of the Revised Statutes (26 U. S. C. A. 1185), which provides as follows:

"All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue for that purpose, and shall be forfeited
61 to the United States. And all raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such manufactured articles, or with design to evade the payment of said tax; and all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles or raw materials are found, may also be seized by any collector or deputy collector, as aforesaid, and shall be forfeited as aforesaid. The proceedings to enforce such

forfeitures shall be in the nature of a proceeding in rem in the district court of the United States for the district where such seizure is made."

This section, enacted in 1866 (14 Stat. 111), was amendatory of section 48 of the act of June 30, 1864 (13 Stat. 240). By the earlier act the forfeiture, save as to goods, wares, merchandise, articles, or objects on which taxes were imposed, and raw materials, was limited to:

"* * * tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles on which duties are imposed, as aforesaid, and intended to be used by them in the fraudulent manufacture of such raw materials, shall be found * * *."

It will be observed that by the amendment, or in the revision, the limitation in regard to the intended use of the tools, implements, instruments and personal property was left out.

Although the amended section has been in effect for upwards of sixty years, the provision in regard to the forfeiture of personal property has never been construed by the Supreme Court or by any Circuit Court of Appeals, so far as we are advised, and the decisions of the Circuit and District courts, both early and late, are in hopeless conflict. Thus in United States v. Thirty-three Barrels of Spirits (28 Fed. Cas. No. 16470), decided in 1868, Judge Lowell said:

"The new statute amends the phraseology of this section in several other particulars, without, perhaps, much variation of the meaning, but omits altogether the qualifications of intended use of the tools, implements, instruments, and personal property and upon a literal interpretation might seem to subject to seizure and forfeiture all goods and chattels and other things coming within the very general description of personal property, to whomsoever they may belong, if found in the same building, including outbuildings, yard, etc., with the offending goods. It is impossible to believe that any such sweeping condemnation is intended to be passed, found upon mere proximity in place, upon the goods of all persons, innocent and guilty. In its application to a city or other busy place, where the same building is divided into numerous tenements, shops, offices, counting-houses, and warerooms, all being often found under one roof, and each occupied by a different tenant, the operation of such a law would work the most enormous and unheard of injustice. To take a single example: the money in the vaults of a bank might be forfeited for the fault of some petty trader in the attic of the banking-house."

The court then applied the maxim noscitur a sociis and restricted the forfeiture to tools, implements, instruments and personal property connected with the illegal business and found within the building, yard, or inclosure where the business was carried on.

In United States v. Sixteen Barrels of Distilled Spirits (27 Fed. Cas. No. 16300), decided in 1879, Judge Choate refused to follow

the decision of Judge Lowell, but himself softened the rigor of the statute by confining the term place within narrow limits, thus permitting it to control over the more general language, building, yard, or inclosure. Judge Choate followed earlier decisions in the same court, which seem to sustain his view, except, perhaps as to the meaning of the term "place" as employed in the statute. A reference to the other cases does not aid us.

The cases to which we have referred were all decided between 1868 and 1879, and for the next half century, so far as we are advised, there is no reported case on the subject under consideration. As said by the court in In re Hurley (37 F. (2d) 397, 401), decided during the present year:

"Since 1879, so far as disclosed by reported cases, the Department of Internal Revenue of the United States has not availed itself of this statute to seize personal property other than contraband goods, except in the case of a distillery or manufactory of some kind."

In United States v. One Ice Box (37 F. (2d) 120), the
63 court declared a forfeiture under facts very similar to those involved in this case, holding that all personal property found in a place where contraband articles intended to be sold or removed in fraud of the internal revenue laws, or to avoid payment of taxes, are kept, is subject to forfeiture under the section in question. On the other hand, in In re Hurley, supra, a contrary conclusion was reached, the court saying:

"I believe that the intent of the legislation in the matter of the seizure of other personal property which was clearly expressed in the statute in the form in which it was passed in 1864, was not changed by the taking out of certain words by the amendment of 1866. These words were taken out for a different purpose. I believe that the statute in its present form, when submitted to all the tests of statutory construction, still means that other personal property may be seized only in places where the contraband articles are being fabricated. I do not believe that it was ever intended that the finding of half a dozen bottles of non-tax paid liquor would work a confiscation of the entire contents of a large building used as a rooming house, or of the entire contents of a drug store or a department store in which they might be found or authorize the seizure and removal and forfeiture of all of the furniture and fittings of a great hotel."

A reference to the decided cases clearly demonstrates that the question with which we are now confronted is by no means free from doubt or difficulty, but in view of the apparent attitude of the department charged with the administration of the revenue laws during the past fifty years, and in view of the inequality, if not injustice, that would necessarily result from a strict enforcement of the forfeiture provisions of the statute, as construed by the court below, we feel constrained to hold that such provisions should be limited or restricted to places where the contraband articles are

manufactured as in C. I. T. Corporation v. United States, decided by this court November 10, 1930.

The judgment of the court below is therefore reversed.

(Endorsed:) Opinion. Filed Nov 17, 1930. Paul P. O'Brien, clerk.

64 United States Circuit Court of Appeals for the Ninth Circuit.

EDWARD RYAN, CLAIMANT OF ONE BRUNSWICK BAR, Complete with Mirrors, etc., appellant
vs.
UNITED STATES OF AMERICA, APPELLEE
No. 6184

Decree

APPEAL from the District Court of the United States for the District of Montana

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Montana, and was duly submitted.

On consideration whereof it is now here ordered, adjudged, and decreed by this court, that the decree of the said District Court in this cause be, and hereby is, reversed.

(Endorsed:) Decree. Filed and entered November 17, 1930. Paul P. O'Brien, clerk.

65 United States Circuit Court of Appeals for the Ninth Circuit

EDWARD RYAN, CLAIMANT OF ONE BRUNSWICK BAR, ETC., appellant
vs.
UNITED STATES OF AMERICA, APPELLEE
No. 6184
and
IN THE MATTER OF THE PETITION OF GEORGE ANDERSON FOR the Return of One-half Dozen 16-oz. Glasses, etc., and George Anderson, appellant
vs.
UNITED STATES OF AMERICA, APPELLEE
No. 6185

Application for stay of mandate

[Postal Telegraph]

578 43 GOVT. Helena, Mont. 17 530P.

1931 FEB 17 PM 5 08

PAUL P. O'BRIEN,
Clerk, Circuit Court of Appeals.

Wire just received from Attorney General states sixty days' extension of time granted by Supreme Court for filing certiorari in Ryan

and Anderson cases, numbers 6184 and 6185. Request order staying issuance of mandate both cases accordingly.

HOWARD A. JOHNSON,
Assistant U. S. Attorney.

Order staying issuance of mandate

Upon application of Mr. Howard A. Johnson, assistant United States attorney, counsel for the appellee in each of the above causes, and good cause therefor appearing, it is ordered that the mandate of this court in each of the above causes be, and hereby is, stayed to and including April 18, 1931.

FRANK H. RUDKIN,
United States Circuit Judge.

Dated, San Francisco, California, February 18, 1931.

(Endorsed:) Application for and order staying issuance of mandate. Filed February 18, 1931. Paul P. O'Brien, clerk.

66 United States Circuit Court of Appeals for the Ninth Circuit

EDWARD RYAN, CLAIMANT OF ONE BRUNSWICK BAR, COMplete with Mirrors, etc., appellant
vs.
UNITED STATES OF AMERICA, APPELLEE. } No. 6184

Certificate of clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to record certified under rule 38 of the Revised Rules of the Supreme Court of the United States

I, Paul P. O'Brien, as clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-five (65) pages, numbered from and including 1 to and including 65, to be a full, true, and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellee, and certified under rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United State Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this eighteenth day of February A. D. 1931.

[SEAL.]

PAUL P. O'BRIEN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA

v.

EDWARD RYAN, CLAIMANT OF ONE BRUNSWICK BAR, ETC.

UNITED STATES OF AMERICA

v.

GEORGE ANDERSON

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRITS OF CERTIORARI

On consideration of the motion of counsel for petitioner in the above-entitled cases, and good cause therefor having been shown, it is now ordered that the time within which a petition for writs of certiorari in the above-entitled causes may be filed herein be, and the same is hereby, extended for a period of sixty days from this date.

Dated this 16th day of February, 1931.

GEO. SUTHERLAND,
Associate Justice of the
Supreme Court of the United States.

77460—31

U. S. GOVERNMENT PRINTING OFFICE: 1931

Supreme Court of the United States

Order allowing certiorari

Filed May 25, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.